PHILIP MORRIS COMPANIES INC. **INTER-OFFICE CORRESPONDENCE**

120 PARK AVENUE, NEW YORK, N.Y. 10017

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To: Corporate Management Committee **Date:** March 17, 1994

From: Murray H. Bring

Subject: LITIGATION SETBACK

You will recall that some time ago a case was filed in Florida by 30 current and former non-smoking flight attendants, alleging that they were suffering various illnesses as a result of their exposure to environmental tobacco smoke during their years of service as flight attendants (the Broin case). The case purported to be a class action on behalf of approximately 60,000 other similarly-situated flight attendants. All of the cigarette companies were named as defendants.

Early in the litigation, we filed a motion to dismiss the class-action allegations, arguing that this was not an appropriate case for class-action certification. The motion was filed before any discovery had been taken. The trial judge in the State Court granted our motion, concluding that the state rule permitting class actions did not contemplate this type of case, because the issues presented by the complaint raised factual and legal questions that would vary from one person to the next.

Yesterday, a three-judge panel of the intermediate Court of Appeals reversed the trial judge's decision. The Appellate Court disagreed with all of the conclusions reached by the trial court concerning the applicability of the class-action rule, and remanded the case to the trial court for reinstatement of the class-action allegations.

Importantly, the Appellate Court did not require class-action certification, as was reported in some of the news stories. The case will now go back to the trial court, which will presumably authorize discovery on the class-action issues, and will make a new ruling on the appropriateness of class-action treatment, based upon whatever record is developed through the discovery process. That process should enable us to develop a record on certain class-action issues which were briefed in our motion, but which neither the trial court nor the Appellate Court reached.

The bottom line, therefore, is that we still have an opportunity to persuade the trial court that class-action status should be denied. However, it will be more of an up-hill battle now, because the Appellate Court's decision certainly suggests that this would be an appropriate class action, and the trial judge is likely to be fearful of another reversal.

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Our counsel are also considering other options that may be open at this time, including a request for a re-hearing by the entire Appellate Court, or a request for review by the Florida Supreme Court. In that regard, local counsel advise that the Appellate Court decision is inconsistent with prior Florida Supreme Court decisions. However, because the proceeding is still in a preliminary stage, there is no assurance that the Supreme Court will agree to grant a review at this time.

cc: J. Cullman 3rd
C. Goldsmith
H. Maxwell
R. Millhiser
G. Weissman

bcc: S. Parrish
C. Wall

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